

VZCZCXYZ0012
RR RUEHWEB

DE RUEHGV #0730/01 2461558
ZNR UUUUU ZZH
R 031558Z SEP 09
FM USMISSION GENEVA
TO RUEHC/SECSTATE WASHDC 9182
INFO RUCPDOG/USDOC WASHDC
RUEHSUN/USUN ROME IT

UNCLAS GENEVA 000730

SIPDIS
SENSITIVE

SECSTATE FOR IO, EEB, OES
COMMERCE FOR USPTO
ROME for FODAG

E.O. 12958: N/A
TAGS: [ECON](#) [KIPR](#) [SENV](#) [WIPO](#)
SUBJECT: WIPO Conference on Public Policy

¶1. SUMMARY (SBU): During the July 13-14 World Intellectual Property Organization (WIPO) Conference on Intellectual Property (IP) and Public Policy Issues in Geneva, Switzerland, participants explored and clarified the connection between IP and several major public policy issues such as climate change, public health, food security and protection of traditional knowledge. The conference was held at the behest of the WIPO Standing Committee on Patents (SCP) and provided an opportunity for WIPO not only to reinsert itself into debates on IP's role in addressing key public policy issues, but also to claim a leadership role that WIPO hopes will result in better understanding of the IP aspect of public policy issues by intergovernmental organizations, non-governmental organizations and member states. A Chair's report on the public policy conference will be submitted to the next SCP meeting in November 2009, at which time, developing countries may push to have the conference's topics become a new focal point for work under the SCP. To address concerns from some WIPO Member States that the focus of the public policy conference not be diverted from the patent system, WIPO held a separate conference on access to reading material for the visually impaired on the morning of July 13 (septel). END SUMMARY.

Climate Change

¶2. (U) The role of IP in promoting the development and diffusion of green technologies to combat climate change was at the heart of discussions at a two-day international conference on IP and public policy issues. The overall view at the Conference was that IP is a key incentive for the creation of new green technologies to address climate change problems. To assess the extent of the climate change problem, Michel Jarraud, Secretary General the World Meteorological Organization (WMO) pointed to unequivocal scientific evidence on the tremendous impacts of climate change on health and food security. He noted that IP should be a catalyst, and not an obstacle, to solving problems associated with climate change. Jarraud emphasized the advantages of international cooperation and the need for a multi-disciplinary approach to the challenges arising from climate change, as well as the importance of facilitating technology transfer.

¶3. (U) Britain's Minister for Higher Education and Intellectual Property, Mr. David Lammy, and WIPO DG Gurry also provided similar messages emphasizing the importance of IP rights in facilitating the transition to clean technologies and renewable energies, and the range of options offered by the IP system in identifying, transferring, and disseminating those technologies to address climate change. Lammy specifically noted that the technology transfer issue was crucial to the success of climate change negotiations in the United Nations Framework Convention on Climate Change (UNFCCC). DG Gurry added that IP rights offered the necessary incentives to develop green technologies, noting moves by several countries to develop systems to fast track the examination of patent applications in the area of clean technologies and renewable energy. The IP system offers a proven means of

encouraging investment in the clean technologies required to adapt to and mitigate climate change.

¶4. (U) As referenced in the speeches of UK Minister Lammy and DG Gurry, technology transfer of green technology is a key issue among NGOs, developing countries and the IP community. It is also a key feature in the UNFCCC, which is slated to have a finalized agreement by the end of the year. Wanna Tanunchaiwatana, Manager of the Technology Sub-Program of the UNFCCC, reported that draft language concerning technology transfer would commit developed countries 'to take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other parties, particularly developing country parties' (Article 4.5 of the UNFCCC). Tanunchaiwatana believes that difficulty in negotiating the IP section of the UNFCCC agreement does not rest with the idea of transferring IP-dependent green technologies itself, but with the broader challenge of how to implement and encourage the diffusion of all relevant technologies to reduce the impacts of climate change on a global scale. She reminded attendees of the short amount of negotiating time remaining before the December deadline, and encouraged parties to work through the current standstill on IPR in the UNFCCC talks.

¶5. (U) In response to the growing debate on whether the solution to climate change should mirror the compulsory license solution reached in the WTO for improving access to pharmaceuticals for poor countries, economist Daniel Johnson and Chief IP Counsel for General Electric Carl Horton noted empirical research illustrating that weakening IPR protection for climate change-related technologies is an unsound policy and will harm innovation. It was noted that there are very few patents on green technologies (fewer than in the pharmaceutical sector), making compulsory licensing unnecessary in most cases. Panelists emphasized that a lack of green technology patents in this area shows that IP is not an obstacle to development and it allows for open access and further innovation. They concluded that proposals in the UNFCCC for mandatory technology transfer and/or compulsory licensing under UNFCCC will have the unintended effect of hampering any investment and innovation in this area. It was also highlighted that technology transfer concerns must be addressed on a commercial basis and not through government enforcement.

Public Health and Traditional Knowledge

¶6. (U) Evident throughout the discussions related to public health was a theme calling for 'strong collaborative action' among IGOs and the private sector to address questions on IP, trade and public health. WHO Director General Dr. Margaret Chan stated that while innovation has a key role to play in new drug development, market forces alone are insufficient to ensure the delivery of affordable and universal public health solutions. She noted that both needs- and profit-driven incentives should be explored to address both access problems faced by the poor and lack of new treatments for neglected diseases.

¶7. (U) Dr. Chan said that international agreements can be shaped in ways favoring health needs of the poor and cited the May 2008 World Health Assembly-adopted resolution on public health, innovation and intellectual property, as a model. According to Dr. Chan, the global strategy and plan of action contained in the resolution provide agreed-upon lines of action for making health care products more accessible and affordable, especially in the developing world. Further, Chan noted that creative solutions to address the health needs of the poor that complement the IP system include UNITAID's patent pool, a voluntary system created with the intent to reduce expenses and increase access to IP essential to make medicines that are needed by poor countries facing the HIV/AIDS crisis. Chan also cited other IP-complementary solutions, such as WHO's pre-qualification program, which helps developing country producers achieve necessary quality standards to produce safe and effective medicines.

¶8. (U) World Trade Organization (WTO) Director General Pascal Lamy also underlined a need for effective international partnerships. With interdependent issues of public health, climate change, biodiversity and food security, "no single international agency has a monopoly on these diverse areas of policy," said Lamy. Noting

that climate change will likely have a severe impact on disease patterns and on agriculture, Lamy stressed that the effective use of the IP system and of TRIPS flexibilities are important, but do not stand alone: IP law and policy must be harnessed with drug procurement policies, pro-competition safeguards, and regulation of drugs for safety and quality.

¶9. (U) Tony Wood, Vice President of Medicinal Chemistry at Pfizer Global Research and Development, noted that IP is absolutely essential from the researchers' point of view. He added that 10 to 12 years elapse between inventing the right molecule and undertaking all the necessary testing and trials to bring it to market. Without patents, the research would be held as a trade secret during testing, holding back medical research that is aided by disclosure in patent applications.

¶10. (U) Joseph Straus of the Max Planck Institute for Intellectual Property agreed, saying a precondition of access to medications is their existence, which means research and development must be incentivized. Robert Sebbag, Vice President of Access to Medicines at Sanofi-Aventis, added that important progress is being made to effectively address access to medicine concerns for the poor through public and private partnerships. Moreover, he noted that the industry is utilizing alternative models to deliver lower profit medicines at higher volumes to treat neglected diseases without dismantling the patent system. He reminded the audience that access to affordable medicines is just one piece of the puzzle, and that education and communication are key in fighting diseases.

TRADITIONAL KNOWLEDGE

¶11. (U) Discussions also centered on the role of traditional knowledge in addressing IP and public health concerns. Claudia Ines Chamas, senior advisor in the Secretariat of Sciences and Technology and Strategic Inputs at Brazil's Ministry of Health noted that for many neglected diseases, the medicines are old, toxic, expensive, or in short supply. She stated that access to medicine is not possible without reasonable efforts towards increasing local capacity and building a local basis of knowledge. Yonah Seleti, Director General of South Africa's Department of Science and Technology stated that the "African renaissance can only be borne on the role of indigenous knowledge systems". According to Seleti, indigenous people have enormous economic and social potential in their knowledge, but the current IP system sometimes fails to protect that knowledge. It was also noted that misappropriation of traditional knowledge must be stopped.

¶12. (U) Vinod Kumar Gupta, head of the Information Technology Division at the Traditional Knowledge Digital Library (TKDL), a project of the Council of Scientific and Industrial Research in India, reported on his efforts to use the TKDL to catalogue traditional knowledge in a patent-like format so that it is easier to identify as prior art. He mentioned that a recent agreement with the European Patent Office has made the database available for patent examiners to use in grant procedures, and a similar agreement is expected soon with the U.S. Patent and Trademark Office. He concluded by noting that collaborative research between traditional knowledge and modern medicine can yield great public health benefits, but IP agreements must find ways to protect traditional knowledge.

¶13. (SBU) COMMENT: It should be noted that, though not specifically raised at the Conference, the issue of providing IP protection for traditional knowledge/access to genetic resources/traditional cultural expressions (TKGRTCE) has been examined by Member States for several years at WIPO's Intergovernmental Committee (IGC) on TKGRTCEs. WIPO technical assistance units also continue to provide essential advice to developing and least developed countries on the effective use of existing IP principles and systems for these IP-related interests. All Member States support the need for protecting traditional knowledge and are committed to making progress on the protection, preservation and promotion of TKGRTCEs. However, the Africa Group, along with Brazil, India, Indonesia, Iran, Pakistan, and many Caribbean nations are currently demanding that an internationally-binding treaty be negotiated at the IGC and concluded and signed by Member States in 2012. Developed countries, as well as two developing countries (South Korea and Singapore),

believe that it would be premature to agree upon the nature of the text to be negotiated (i.e. that it would be a binding treaty) without a pre-agreement on the content of that text. The U.S. and others also maintain that no outcome of the IGC should be precluded, including the adoption of a legally binding international instrument, but that, at this point, no outcome should be prejudged either. END COMMENT

Food Security

¶14. (U) In opening remarks under the topic of IP and Sustainable Agriculture, Algerian Ambassador Idriss Jazaory stated that the number of malnourished people in the world has topped one billion. WIPO's role here is to ensure that the system for IP protection contributes to the creation of new food and agricultural resources, but at the same time does not become an obstacle to the most vulnerable people in the most vulnerable places having access to them, said Jazaory. He noted that IPR could be used to justify food cartels or to alleviate hunger; how this plays out depends on the international community.

¶15. (U) Shakeel Bhatti, Secretary of the International Treaty on Plant Genetic Resources for Food and Agriculture at the Food and Agriculture Organization (FAO) of the United Nations added that access to seeds has impacted food security. The treaty has, he said, made significant breakthroughs in funding its access and benefit sharing system, while waiting for the built-in time lag of 5 to 7 years before commercial products start growing out of it.

¶16. (U) Kanayo Nwanze, President of the International Fund for Agricultural Development (IFAD) noted that it is not tenable to separate IP from sustainable development. Intellectual property rights can serve as catalysts for sustainable agricultural growth, but there needs to be a shift in thinking on technology development from the public/private divide to partnerships and equitable benefits for both stakeholders.

¶17. (U) Richard Jefferson, Chief Executive of non-profit Cambia, proposed one way in which the IP system might be set up for improved collaboration. He reported on the Initiative for Open Innovation, a new project in collaboration with WIPO and the Gates Foundation launched in July 2009, which aims to create a "free, open, global web-based facility" that will map in all languages not only patents, but also regulatory data and science and technology literature, cross-referencing them with key genes and compounds, creating 'patent landscapes' that will allow for a clear picture of what is patented, where it is patented, and who controls it.

¶18. (U) As a part of the Initiative for Open Innovation, Cambia has proposed the creation of a new legal tool they call a 'concord;' a mutual agreement not to assert IP rights in a particular field of use. For example, Jefferson said companies might agree not to assert any IP rights related to research, development, manufacture, delivery or support of malaria interventions. The patents might be enforced for other purposes, but this allows for collaborative innovation to solve specific problems, and will reduce costs for small players who want to work on such problems.

¶19. (U) Michael Kock, the Global Head of IP at agriculture technology firm Syngenta International, compared the seed industry to the entertainment industry, as copying and counterfeits continue to be major problems for the seed industry. He clarified that Syngenta does not seek patents for plants/seeds in least developed countries or enforce rights used in subsistence farming. He noted that the enforcement issues arise in the context of use by large farmers in developed countries. He continued in emphasizing that the disclosure of origin of genetic resources, which has been proposed as a way to protect small growers, is problematic because it increases uncertainty for innovators and will discourage the use of genetic diversity. A key area that would further innovation in the seed industry would be patent harmonization of plant protection, as the existing rules under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) allow for protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof. As a result, there are varying degrees of patent protection for plants from one territory to another.

Closing remarks

¶20. (SBU) In summarizing the two-day Conference, the Chair of the Standing Committee of Patents (SCP), Maximiliano Santa Cruz (Chile), noted that IP is not an end in itself, but an instrument to promote innovation, creativity and the dissemination of knowledge. He added that while the IP system may present some challenges, it can also be part of the solution to development questions. The SCP Chair noted that a common theme during the Conference was that innovation and technology coupled with technology transfer is no doubt an important contribution to solving problems that may arise in other areas of development. The Chair is charged with reporting back to Member States on the outcome of the Conference. Though proposals have yet to be made, certain developing countries are likely to push for further discussion of the topics raised at the Conference, particularly those concerning technology transfer at future SCP meetings, as well as follow up conferences.

¶21. (U) All PowerPoint Presentations and audio speeches can be found at: http://www.wipo.int/meetings/en/2009/ip_gc_ge/ / program.html

GRIFFITHS#